

ORDINANCE NO. 2601-02

AN ORDINANCE amending the Planned Development Overlay Provisions of the Zoning Code and the Rezone provisions authorizing the use of a development agreement and eliminating Performance Agreement Rezones, amending Ordinance No. 1671-89 as amended (EMC 19.29 and 19.41)

WHEREAS, in the Spring of 1999, the City revised the Planned Development Overlay provisions of the Zoning Code simplifying the procedures associated with the establishment and implementation of a Planned Development Overlay Zone without sacrificing its protections; and

WHEREAS, in conjunction with the changes to the PDO Zone regulations, changes were made to the rezone provisions authorizing the use of development agreements in accordance with the provisions of RCW 36.70B.170; and

WHEREAS, the changes to the City's PDO provisions and the authorization of the use of development agreements has proven successful and beneficial;

WHEREAS, the intent of this ordinance is to make revisions to the PDO provisions of the Zoning Code to expand its application; and

WHEREAS, it is the further intent of this ordinance to substitute the development agreement process for the performance agreement rezone process; and

WHEREAS, the City Council finds that the proposed amendments to the Zoning Code are consistent with the Everett Comprehensive Plan; bear a substantial relation to public health, safety or welfare; and promote the best long-term interests of the Everett community;

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

SECTION 1: Ordinance No. 1671-89 as amended by Section 1 of Ordinance No. 2384-99 and Section 16 of Ordinance No. 2538-01 (EMC 19.29.020) which reads in part as follows:

Review process.

All proposals for a PD planned development overlay zone shall be reviewed using the review process as described in the City's Local Project Review Procedures Ordinance. If the proposed planned development overlay zone involves a specific site development plan indicating actual locations of buildings and other site improvements, it shall be treated as a performance agreement rezone in accordance with Section 41.160.D of this title. If the planned development overlay zone does not involve a specific site development plan indicating actual locations of buildings and other site improvements, it shall be considered a non-project rezone as provided in Section 41.160.D of this title, rather than a performance agreement rezone.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

Review process.

All proposals for a PD planned development overlay zone shall be reviewed using the review process described in the City's Local Project Review Procedures Ordinance.

SECTION 2: Ordinance No. 1671-89 as amended by Section 4 of Ordinance No. 2384-99 (EMC 19.29.070) which reads in part as follows:

Zoning map amendment.

The procedure for amending the zoning map for a planned development overlay zone shall be in accordance with the procedure described in Section 41.160.D.12 of this title for performance agreement rezones, or Section 41.160.D.5 of this title for nonproject rezones.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

The procedure for amending the zoning map for a planned development overlay zone shall be in accordance with the procedure described in Section 41 of this title for site-specific rezones.

SECTION 3: Ordinance No. 1671-89 as amended by Section 5 of Ordinance No. 2384-99 (EMC 19.29.080) which reads in part as follows:

Applicability to nonproject rezones.

The provisions of Sections 29.090, 29.100, 29.110, 29.120, and 29.130 of this chapter shall apply only to performance agreement rezones, and not to nonproject rezones.

BE AND THE SAME IS HEREBY SUPERSEDED

SECTION 4: Ordinance No. 1671-89 (EMC 19.29.090) which reads in part as follows:

Final development plan - Time limit for submission - Extension.

Within a period of three years following the approval of the preliminary development plan by city council, the applicant shall file with the planning department a final development plan. The planning director, for good cause, may extend for one year the period for filing of the final development plan.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

Final development plan - Time limit for submission - Extension.

Within a period of three years following the approval of the preliminary development plan by city council or such other time frame established, the applicant shall file with the planning department a final development plan. The planning director, for good cause, may extend for one year the period for filing of the final development plan.

SECTION 5: Ordinance No. 1671-89 (EMC 19.29.100) which reads in part as follows:

Final development plan - Failure to submit.

If the applicant fails to apply for final approval for any reason within the time specified in Section 29.090, the resolution of intent to rezone shall become void. All future permits shall be subject to the requirements of the underlying use zone unless a new application for a planned development is submitted and approved.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

Final development plan - Failure to submit.

If the applicant fails to apply for final approval for any reason within the time specified in Section 29.090, the rezone shall become void. All future permits shall be subject to the requirements of the underlying use zone unless a new application for a planned development is submitted and approved.

SECTION 6: Ordinance No. 1671-89 (EMC 19.29.130A) which reads in part as follows:

Mutual safeguards.

A. The city shall not impose additional zoning code standards to a proposed planned development which has been given preliminary approval, even if code standards have been amended, provided a final development plan is submitted within the original three-year period that the preliminary approval is valid. If the applicant requests an extension of time, the city may impose additional standards to the preliminary planned development approval if such changes are based upon changes to the zoning code or any other

ordinances which have occurred since the original planned development approval was granted.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

Mutual Safeguards

A. The city shall not impose additional zoning code standards on a proposed planned development which has been given preliminary approval, even if code standards have been amended, provided a final development plan is submitted within the original three-year period or within the time period prescribed by the development agreement for final development plan submittal. If the applicant requests an extension of time, the city may impose additional standards on the preliminary planned development approval if such changes are based upon changes to the zoning code or any other ordinances which have occurred since the original planned development approval was granted.

SECTION 7: Ordinance No. 1671-89 as amended by Section 16 of Ordinance No. 2531-01, Section 65 of Ordinance No. 1849-92, Section 1 of Ordinance No. 2012-94 and Section 6 of Ordinance No. 2384-99 (EMC 19.41.160) which reads in part as follows:

Rezoning.

A. User Guide. This subsection establishes the mechanism and criteria for the city to change a zoning classification on the zoning map and to change the boundaries of zones on the zoning map. This mechanism is called rezoning. Please note that this section does not apply to proposals to amend the text of this title. Section 41.170 describes how that can be done.

B. Types of Rezoning. There are two types of rezoning:

1. Area-wide Rezoning. A rezone shall be treated as an area-wide rezone when:

- a. It is initiated by the City; or
- b. A significant class of properties are similarly affected by the proposed rezone; and
- c. It is either:

(1) Based upon an adopted or ongoing comprehensive planning process; or

(2) Part of a process that includes amending the text of this title.

2. Site-specific Rezoning. A rezone will be treated as a site-specific rezone when it does not meet the requirements of section I of this subsection.

3. Notification. Notification for rezoning shall be provided as specified in the City's Local Project Review Procedures Ordinance:

C. Area-wide Rezoning.

1. Applicable Process. The City will use the review process as determined by the City's Local Project Review Procedures Ordinance to review and decide upon a proposal for an area-wide rezone.

2. Area-wide Rezoning - Criteria. The City may decide to approve a proposal to rezone land only if it finds that:

- a. The proposal is consistent with the applicable provisions of the Everett general plan; and
- b. The proposal bears a substantial relation to public health, safety or welfare; and
- c. The proposal promotes the best long-term interests of the Everett community.

3. Area-wide Rezones - Map Change. If the City approves a proposal to rezone land through an area-wide rezone, it will give effect to this decision by making the necessary amendment to the zoning map of the City. Such an amendment to the zoning map shall be made by the City Council adopting an ordinance which specifically describes the property being rezoned.

D. Site-Specific Rezones.

1. Applicable Process. The City will use the review process as determined by the City's Local Project Review Procedures Ordinance to review and decide upon an application for a site-specific rezone.

2. Types. There are two types of site-specific rezones, as provided herein.

a. Nonproject. A nonproject rezone is a request for change of zone classification in which the applicant proposes no specific development. Conditions or restrictions may be placed upon the property and/or its development by the review authority, as necessary to mitigate the project's impacts. Such conditions or restrictions shall be set forth in the resolution or ordinance rezoning the property, which resolution or ordinance shall be recorded on the property, in the county auditor's office.

b. Performance Agreement. A performance agreement rezone is a request for change of zone classification in which the applicant agrees to certain restrictions and conditions as part of the approval of the rezone request. Such conditions or restrictions shall be set forth in the resolution of intent to rezone the property, and shall be recorded on the property, in the county auditor's office, to be disclosed on title documents for the property.

3. Nonproject Rezone - Criteria. The review authority may approve an application for a nonproject rezone if it finds that:

a. The proposed rezone is consistent with the Everett comprehensive plan; and
b. The proposed rezone bears a substantial relation to public health, safety or welfare; and the proposed rezone promotes the best long term interests of the Everett community; and

c. The proposed rezone is appropriate because either:

(1) A rezone is necessary to implement the general plan, or

(2) The rezone is a minor adjustment that will correct a zone boundary that was inappropriate when established by reason of

placing more than one zone classification on a single property.

4. Nonproject Rezones - Implementation - Map Change. If the City approves an application for a nonproject rezone, it will give effect to this decision by adoption of an ordinance or resolution, or by adoption of an ordinance or resolution in conjunction with a development agreement between the City and the applicant, as provided in RCW 36.70B.170, to implement the rezone and make the appropriate change to the zone boundary or zone classification on the zoning map.

5. Performance Agreement Rezones - General. The purpose of the performance agreement rezone is to enable the City to apply special development standards to specific sites where the review authority feels that the application of such standards is necessary to facilitate compatibility of land uses, especially where properties in different zones abut one another or where the potential impacts of uses proposed by the applicant or permitted in the requested zone warrant the use of special development standards. The review

authority may require applications for non-project rezones to be evaluated as performance agreement rezones.

6. Performance Agreement Rezones - Resolutions of Intent. If the City decides to grant the request for a performance agreement rezone, it may adopt a resolution of intent to rezone. The resolution of intent shall establish a particular set of standards which govern the manner in which the site is developed and represents an agreement between the applicant (or future owners of the property) and the City. The resolution of intent permits the applicant to develop the property in accordance with the terms approved as part of the resolution.

7. Performance Agreement Rezones - Criteria. The City may approve an application for a performance agreement rezone only if it finds that:

- a. The proposed rezone is consistent with the Everett comprehensive plan; and
- b. The proposed rezone bears a substantial relation to public health, safety or welfare; and promotes the best long term interests of the Everett community; and
- c. The terms of the resolution of intent agreed to by the applicant and the City are sufficient to mitigate adverse impacts upon existing or anticipated land uses in the immediate vicinity of the subject property.

8. Performance Agreement Rezones - Effect of Approval. If City Council approves an application for a performance agreement rezone, it will give effect to this decision by adopting a resolution of intent to rezone which will have the following effects:

- a. Effect on the Applicant. The applicant may, subject to all other applicable codes and ordinances, develop the subject property in conformity with the resolution of intent to rezone.
- b. Effect on the City. If the applicant completes development of the subject property in conformity with the resolution of intent to rezone, the City shall make the zone boundary or zone classification change on the zoning map that was approved in that resolution. (See section 11 of this subsection.)

9. Performance Agreement Rezones - Minor Modifications.

Subsequent to the adoption of the resolution of intent to rezone, the applicant may apply for a minor modification to the site plan approved as part of that resolution. The City will use the review process described in the City's Local Project Review Procedures Ordinance to review and decide upon an application for a minor modification. If the Director determines that notice to contiguous property owners should be provided regarding the minor changes, the Director may require the proposed modification to be reviewed using a higher level of review process than otherwise required by the City's Local Project Review Procedures Ordinance. The City may approve a minor modification only if it finds that:

- a. The change is necessary because natural features of the subject property not foreseen by the applicant or by the City prior to adoption of the resolution of intent to rezone; and
- b. The change will not result in reducing the landscaped area, buffering areas or the amount of open space on the project required by the resolution of intent; and
- c. The change will not result in increasing the residential density or gross floor area of the project as approved by the resolution of intent; and
- d. The change will not result in any structure, or vehicular circulation or parking area which will adversely effect abutting property or public right-of-way, or conflict with any provisions of the resolution of intent or of this title; and

e. The City determines that the change will not increase any adverse impacts or undesirable effects of the project and that the change in no way significantly alters the project.

10. Performance Agreement Rezone - Major Modifications. The applicant may seek a modification to the approved site plan that does not meet all of the requirements of section 9 of this subsection by submitting the application material required for a new performance agreement rezone. The City will process and decide upon this application, using the provisions in section 7 of this subsection as if it were an application for a new performance agreement rezone.

11. Performance Agreement Rezones - Map Change. Upon completion of the project in full compliance with the resolution of intent to rezone, the City, using review process as described in the City's Local Project Review Procedures Ordinance, shall give effect to the rezone by adopting an ordinance or resolution, or by adoption of an ordinance or resolution in conjunction with a development agreement between the City and the applicant, as provided in RCW 36.70B.170, to implement the rezone and make the change to the zone boundary or zone classification on the zoning map that was approved in the resolution of intent to rezone. The ordinance or resolution shall contain the legal description of the property being rezoned.

E. Zoning of Annexations. For properties which the city council has accepted a seventy-five percent annexation petition or for which the City Council has adopted a resolution initiating annexation proceedings by election, the City shall establish zoning and a comprehensive plan land use designation concurrently with the annexation proceeding. The zoning and comprehensive plan designation shall not become effective until such time as the ordinance annexing the subject properties becomes effective; provided, however, notwithstanding the above, the City is authorized to proceed with the annexation independent of the establishment of the zoning and comprehensive plan designation when the City Council finds the existence of extenuating circumstances based upon the general health, safety and welfare of the area proposed to be annexed and/or the surrounding area. Whenever the City does not adopt zoning and a comprehensive plan designation concurrently with the annexation process, the annexation ordinance will establish an interim zoning designation of R-S (Suburban Residential) along with a complementary comprehensive plan designation which shall become effective upon the effective date of annexation and the annexed area shall remain zoned R-S until such time as the City establishes a different zoning for the annexed area.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

Rezoning.

A. User Guide. This subsection establishes the mechanism and criteria for the city to change a zoning classification on the zoning map and to change the boundaries of zones on the zoning map. This mechanism is called rezoning. Please note that this section does not apply to proposals to amend the text of this title. Section 41.170 describes how that can be done.

B. Types of Rezoning. There are two types of rezoning:

1. Area-wide Rezoning. A rezone shall be treated as an area-wide rezone when:
 - a. It is initiated by the City; or

- b. A significant class of properties are similarly affected by the proposed rezone; and
- c. It is either:
 - (1) Based upon an adopted or ongoing comprehensive planning process; or
 - (2) Part of a process that includes amending the text of this title.
- 2. Site-specific Rezones. A rezone will be treated as a site-specific rezone when it does not meet the area-wide rezone requirements of section B1 of this subsection.
- 3. Notification. Notification for rezones shall be provided as specified in the City's Local Project Review Procedures Ordinance.

C. Area-wide Rezones.

- 1. Applicable Process. The City will use the review process as determined by the City's Local Project Review Procedures Ordinance to review and decide upon a proposal for an area-wide rezone.
- 2. Area-wide Rezones - Criteria. The City may decide to approve a proposal to rezone land only if it finds that:
 - a. The proposal is consistent with the applicable provisions of the Everett general plan; and
 - b. The proposal bears a substantial relation to public health, safety or welfare; and
 - c. The proposal promotes the best long-term interests of the Everett community.
- 3. Area-wide Rezones - Map Change. If the City approves a proposal to rezone land through an area-wide rezone, it will give effect to this decision by making the necessary amendment to the zoning map of the City. Such an amendment to the zoning map shall be made by the City Council adopting an ordinance which specifically describes the property being rezoned.

D. Site-Specific Rezones.

- 1. Applicable Process. The City will use the review process as determined by the City's Local Project Review Procedures Ordinance to review and decide upon an application for a site-specific rezone.
- 2. Criteria. The review authority may approve an application for a site-specific rezone if it finds that:
 - a. The proposed rezone is consistent with the Everett comprehensive plan; and
 - b. The proposed rezone bears a substantial relation to public health, safety or welfare; and the proposed rezone promotes the best long term interests of the Everett community; and
 - c. The proposed rezone mitigates any adverse impact(s) upon existing or anticipated land uses in the immediate vicinity of the subject property.

3 Site-Specific Rezones - Implementation - Map Change. If the City approves an application for a site-specific rezone, it will give effect to this decision by adoption of an ordinance, or by adoption of an ordinance or resolution in conjunction with a development agreement between the City and the applicant, as provided in RCW 36.70B.170, to implement the rezone and make the appropriate change to the zone boundary or zone classification on the zoning map.

E. Zoning of Annexations. For properties which the city council has accepted an annexation petition as provided by State law or for which the City Council has adopted a resolution initiating annexation proceedings by election, the City shall establish zoning and a comprehensive plan land use designation concurrently with the annexation proceeding. The zoning and comprehensive plan designation shall not become effective

until such time as the ordinance annexing the subject properties becomes effective; provided, however, notwithstanding the above, the City is authorized to proceed with the annexation independent of the establishment of the zoning and comprehensive plan designation when the City Council finds the existence of extenuating circumstances based upon the general health, safety and welfare of the area proposed to be annexed and/or the surrounding area. Whenever the City does not adopt zoning and a comprehensive plan designation concurrently with the annexation process, the annexation ordinance will establish an interim zoning designation of R-S (Suburban Residential) along with a complementary comprehensive plan designation which shall become effective upon the effective date of annexation and the annexed area shall remain zoned R-S until such time as the City establishes a different zoning for the annexed area.

SECTION 8: Ordinance No. 1671-89 as amended by Ordinance No. is hereby amended by the addition of the following new section to be included in Chapter 19.41 to read as follows:

Performance Agreement Rezones (The following applies to performance agreement rezones in which a resolution of intent to rezone has been approved by the Everett City Council prior to December 31, 2001)

1. Performance Agreement Rezone. A performance agreement rezone is a type of site-specific rezone in which a request for change of zone classification in which the applicant agrees to certain restrictions and conditions as part of the approval of the rezone request. Such conditions or restrictions shall be set forth in the resolution of intent to rezone the property, and shall be recorded on the property, in the county auditor's office, to be disclosed on title documents for the property.

The purpose of the performance agreement rezone is to enable the City to apply special development standards to specific sites where the review authority feels that the application of such standards is necessary to facilitate compatibility of land uses, especially where properties in different zones abut one another or where the potential impacts of uses proposed by the applicant or permitted in the requested zone warrant the use of special development standards. The review authority may require applications for non-project rezones to be evaluated as performance agreement rezones.

2. Resolutions of Intent. If the City decides to grant the request for a performance agreement rezone, it may adopt a resolution of intent to rezone. The resolution of intent shall establish a particular set of standards which govern the manner in which the site is developed and represents an agreement between the applicant (or future owners of the property) and the City. The resolution of intent permits the applicant to develop the property in accordance with the terms approved as part of the resolution.

3. Criteria. The City may approve an application for a performance agreement rezone only if it finds that:

- a. The proposed rezone is consistent with the Everett comprehensive plan; and
- b. The proposed rezone bears a substantial relation to public health, safety or welfare; and promotes the best long term interests of the Everett community; and

c. The terms of the resolution of intent agreed to by the applicant and the City are sufficient to mitigate adverse impacts upon existing or anticipated land uses in the immediate vicinity of the subject property.

4. Effect of Approval. If City Council approves an application for a performance agreement rezone, it will give effect to this decision by adopting a resolution of intent to rezone which will have the following effects:

a. Effect on the Applicant. The applicant may, subject to all other applicable codes and ordinances, develop the subject property in conformity with the resolution of intent to rezone.

b. Effect on the City. If the applicant completes development of the subject property in conformity with the resolution of intent to rezone, the City shall make the zone boundary or zone classification change on the zoning map that was approved in that resolution.

5. Minor Modifications.

Subsequent to the adoption of the resolution of intent to rezone, the applicant may apply for a minor modification to the site plan approved as part of that resolution. The City will use the review process described in the City's Local Project Review Procedures Ordinance to review and decide upon an application for a minor modification. If the Director determines that notice to contiguous property owners should be provided regarding the minor changes, the Director may require the proposed modification to be reviewed using a higher level of review process than otherwise required by the City's Local Project Review Procedures Ordinance. The City may approve a minor modification only if it finds that:

a. The change is necessary because natural features of the subject property not foreseen by the applicant or by the City prior to adoption of the resolution of intent to rezone; and

b. The change will not result in reducing the landscaped area, buffering areas or the amount of open space on the project required by the resolution of intent; and

c. The change will not result in increasing the residential density or gross floor area of the project as approved by the resolution of intent; and

d. The change will not result in any structure, or vehicular circulation or parking area which will adversely effect abutting property or public right-of-way, or conflict with any provisions of the resolution of intent or of this title; and

e. The City determines that the change will not increase any adverse impacts or undesirable effects of the project and that the change in no way significantly alters the project.

6. Major Modifications. The applicant may seek a modification to the approved site plan that does not meet all of the requirements of section 5 of this subsection by submitting an application which will be reviewed by the City using the provisions in section 3 of this subsection as if it were an application for a new performance agreement rezone.

7. Map Change. Upon completion of the project in full compliance with the resolution of intent to rezone, the City, using review process as described in the City's Local Project Review Procedures Ordinance, shall give effect to the rezone by adopting an ordinance implementing the rezone and making the change to the zone boundary or zone classification on the zoning map that was approved in the resolution of intent to rezone. The ordinance shall contain the legal description of the property being rezoned.

SECTION 9: Nothing in this ordinance shall be construed as abating any official action of the City now pending under or by virtue of any of the ordinances herein amended or superseded by the adoption of this ordinance or as waiving any right of the City under the policies, provisions and regulations amended or superseded by the adoption of this ordinance.

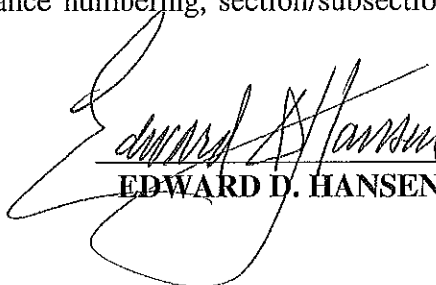
SECTION 10: If any section, subsection, paragraph, sentence, clause or phrase set forth in this ordinance or its application to any person or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance or its application to any other person or situation. The City Council of the City of Everett hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 11: It is expressly the purpose of this ordinance to provide for and promote the health safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this ordinance.


It is the specific intent of this ordinance that no provision nor any term used in this ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees.

Nothing contained in this ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City, its officers, employees or agents.

SECTION 12: The City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.


EDWARD D. HANSEN, Mayor

ATTEST:


CITY CLERK

Passed: 5-1-01

Valid: 5-7-02

Published: 5-12-02

Effective Date: 5-23-02

**SUMMARY OF ORDINANCE NO. 2601-02
OF THE CITY OF EVERETT, WASHINGTON**

On the 1st day of May, 2002, the City Council of the City of Everett passed Ordinance No. 2601-02. A summary of the content of said ordinance, consisting of the title, provides as follows: AN ORDINANCE amending the Planned Development Overlay Provisions of the Zoning Code and the Rezone Provisions authorizing the use of a development agreement and eliminating Performance Agreement Rezones, amending Ordinance No. 1671-89 as amended (EMC 19.29 and 19.41).

The full text of this ordinance will be mailed upon request.

Dated this 8th day of May, 2002
City Clerk, Sharon Marks
2930 Wetmore Avenue
Everett, WA 98201
(425) 257-8610

Published: Herald 5/12/02